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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 590

HERMAN O. HAGNER AND JULIA C. HAGNER, petitioners

v.

UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE UNITED STATES

The United States does not oppose the issuance of a writ of certiorari in this case.

OPINIONS BELOW

The Supreme Court of the District rendered no opinion, but its order overruling defendants' motion for a new trial and in arrest of judgment (R. 5–6) is in the record. The opinion of the Court of Appeals (R. 12–19) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered November 23, 1931. (R. 19.) A petition for rehearing was denied December 5, 1931. (R. 20.) The petition for certiorari was filed December 24, 1931. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a defendant in a criminal case can waive the requirements of Article III, Section 2, of the Constitution that the trial of crimes "shall be by jury; * * * in the State where the said crime shall have been committed," and the provisions of the Sixth Amendment that the accused "shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

2. If the constitutional provisions mentioned may be waived, whether they were waived in this case when the defendants failed to file a plea to the jurisdiction and raised the question for the first time by motion in arrest of judgment.

3. Whether under the provisions of Section 44 of the Code of the District of Columbia the jurisdiction of the Supreme Court of the District in criminal cases is limited to crimes and offenses committed within the District.

STATUTES INVOLVED

The Code of the District of Columbia (Ed. March 4, 1929, Title 18, Secs. 43 and 44) provides:

> 43. *Jurisdiction; powers of circuit and district courts conferred.*—The said court shall possess the same powers and exercise the same jurisdiction as the district courts of the United States, and shall be deemed a court of the United States. (Mar. 3, 1863, 12 Stat. 762, c. 91; Mar. 3, 1901, 31 Stat. 1199, c. 854, sec. 61; June 30, 1902, 32 Stat. 522, c. 1329; Mar. 3, 1911, 36 Stat. 1167, c. 231, sec. 289.)
>
> 44. *Same; general jurisdiction.*—Said court, except as otherwise provided in this title, shall have cognizance of all crimes and offenses committed within said district and of all cases in law and equity between parties, * * *.

STATEMENT

The petitioners were indicted and tried in the Supreme Court of the District of Columbia for violating Section 215 of the United States Criminal Code. (U. S. C., Title 18, Section 338.) The indictment alleged that at the District of Columbia defendants devised a scheme to defraud which it described in some detail and then averred that the defendants, for the purpose of executing said scheme, placed and caused to be placed in the post office at Scranton, in the State of Pennsylvania, to be sent and delivered by the post office establishment of the United States, certain described mail matter. (R. 1–3.)

No question was raised by petitioners as to the jurisdiction of the trial court until after they were found guilty by the jury when they moved in arrest of judgment, one of the grounds of the motion being that the indictment showed on its face that the trial court had no jurisdiction because the indictment failed to show the commission of any crime within the jurisdiction of the trial court. (R. 4–5.) The motion was denied. (R. 5–6.) The petitioners appealed to the Court of Appeals of the District of Columbia. That Court affirmed the judgment of conviction, holding that the defendants had waived their constitutional privilege to refuse to be tried in the District of Columbia by failing to object seasonably to the jurisdiction of the trial court. (R. 13–19.)

DISCUSSION

This case presents several questions of general importance which appear to be worthy of review in this Court. Accordingly, we do not oppose the issuance of the writ of certiorari.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

NUGENT DODDS,
Assistant Attorney General.

WHITNEY NORTH SEYMOUR,
Special Assistant to the Attorney General.

JANUARY, 1932.

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